

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-124
Hawaii Administrative Rules

November 7, 1995

SUMMARY

Chapter 124 of Title 3, Hawaii Administrative Rules,
entitled "Preferences", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 124

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SUBCHAPTER 1

HAWAII PRODUCTS

Historical Note: Subchapter 1, Chapter 124 Subtitle 11 of Title 3, Hawaii Administrative Rules, is based upon Chapter 60 of Title 3, HAR, Rules Governing Preference for Hawaii Products of the department of accounting and general services. [Eff. 3/20/81; R]

§3-124-2

§3-124-1 Purpose. The purpose of these rules is to provide procedures for qualifying and registering products on the Hawaii products list and for the application of preferences thereof. The objective is to promote the use of Hawaii products, as defined below, by state purchasing agencies.
[Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-2 Definitions. As used in these rules:
"Hawaii input" means that part of the cost of a product attributable to production, manufacturing, or other expenses arising within the State. "Hawaii input" includes but is not limited to:

- (1) The cost to mine, excavate, produce, manufacture, raise, or grow the materials in Hawaii;
- (2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii;
- (3) The cost of labor, variable overhead, utilities, and services incurred in the production and manufacturing of materials or products in the State;
- (4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools and equipment situated and located in the State and utilized in the production or manufacturing of a product.

"Hawaii product" means product mined, excavated, produced, manufactured, raised, or grown in the State by a person where the input stated under the definition "produced or manufactured" constitutes no less than

twenty-five per cent of the manufactured cost. Where the value of the input constitutes twenty-five per cent or more but less than fifty per cent of the manufactured cost, the product shall be classified as class I; where the value of the input constitutes fifty per cent or more but less than seventy-five per cent of the manufactured cost, the product shall be classified as class II; where the value of the input constitutes seventy-five per cent or more of the manufactured cost, the product shall be classified as class III.

"Hawaii products list" means the list published by the administrator itemizing those products that have been found qualified as Hawaii products, the names and addresses of the manufacturers, the classes and

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preference percentages that the products will be allocated if they meet the requirements for which offers are solicited.

"Non-Hawaii product" means a product that is not registered on the Hawaii products list.

"Person" means every individual, partnership, firm, society, unincorporated association, joint venture, group hui, joint-stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, or other entities, whether the persons are doing business for themselves or in any agency or a fiduciary capacity.

"Produced or manufactured" means the processing, developing, and making of a thing into a new article with a distinct character and use, through the application of input within the State including Hawaii products, labor, skill, or other services. This does not include the mere assembling or putting together of non-Hawaii products or materials.

"Product" means a material, manufacture, merchandise, good, ware, and foodstuff.

"Registered Hawaii product" means a Hawaii product that is registered on the Hawaii products list.

"Solicitation" means an invitation for bids or a request for proposals. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-3 Qualification procedure. (a) Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete an application according to instructions and file with the administrator. Financial information submitted to the administrator pursuant to these rules for the purpose of determining classification of a product shall be treated as confidential when a person has made a written request for confidentiality. In accordance with Chapter 92F, HRS, the administrator shall properly safeguard such information and shall not make it available to the public.

(b) A single application may be submitted for more than one product; however, separate data sheets

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shall be submitted for each product for which registration is requested. Further, it is necessary that each product be specified clearly and not by broad category of product.

(c) Cost data for each product shall reflect the product's actual total production cost for the most recent full accounting period. If a product has not been in production during the full accounting period, approval may be granted based on cost data representing that shorter period.

(d) If upon completion of the review, the administrator finds that a product has qualified as a Hawaii product, the administrator shall so notify the applicant in writing, list the product on the Hawaii products list as a registered Hawaii product, and notify the chief procurement officers and heads of purchasing agencies or designees of the decision. Applicants whose products do not qualify for the Hawaii products list shall be notified in writing of the decision and the reasons therefor. Any applicant whose product was determined not to qualify for registration on the Hawaii products list or who contests the classification may resubmit their application within thirty days addressing the reasons therefore. The

administrator shall respond to the applicant within thirty days.

(e) Should the administrator receive a protest challenging the validity of the classification of a Hawaii product, the administrator may request an audit of the information provided should the need arise to determine if the proper classification of the product is as defined under Hawaii product in section 3-124-2. A request for audit shall be sent to the person having requested registration of the product on the Hawaii products list, and the person shall bear the cost of the audit. The administrator may also request any additional information determined necessary in order to determine proper classification. The administrator shall approve or reject the classification for each Hawaii product and advise the applicant or contractor within thirty days after receipt of information.

(f) Application, renewal, and other forms required shall be provided by the administrator.
[Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §§92F-14, 103D-1002)

§3-124-4 Bidding procedure. (a) These rules
§3-124-4

shall apply to all solicitations issued by a state purchasing agency, when a Hawaii product is available for the procurement.

(b) Solicitations to which this preference is applicable shall refer to the preferences for Hawaii products in subchapter 1, chapter 124, and shall also contain a notice referring to the place where the Hawaii products list may be examined.

(c) To be eligible for preference, a product shall be qualified and registered on the Hawaii products list on the date that a solicitation is first publicly advertised.

(d) The classification of a registered Hawaii product on the date a solicitation is first publicly advertised shall determine the preference allowed the product.

(e) Prospective offerors shall be informed of the registered Hawaii products that meet the requirements for which offers are being solicited.

- (1) When more than one registered Hawaii product meeting minimum requirements is available, a schedule describing all registered Hawaii products and their established classes shall be included in the solicitation.
- (2) Purchasing agencies shall provide in the solicitation appropriate space(s) for offerors to designate their intention to use or supply a non-Hawaii product for those items for which registered Hawaii products are available, and to list the price of the non-Hawaii product f.o.b. jobsite, unloaded, including applicable general excise tax and use tax.
 - (A) An offeror who fails to designate that the offer submitted is based on a non-Hawaii product shall be presumed to be providing a registered Hawaii product, and award, when made to that offeror, will be on the basis that a registered Hawaii product will be delivered or used, regardless of the product listed in the offer.
 - (B) An offeror need not designate that an individual product to be used or supplied is a registered Hawaii product, except in those instances where there are more than one registered Hawaii product that meet the specifications and

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the products have been assigned different classes.

- (C) Where there are more than one registered Hawaii product that meet the specifications and the products have been assigned different classes, provisions shall be made in the solicitation so that the offeror may designate which of the different classes of registered Hawaii products are to be used or supplied; if the bidder or offeror fails to indicate which of the different classes of Hawaii products will be used, preference will be given based on the class with the lower

percentage. [Eff DEC 15 1995]
(Auth: HRS §§103D-202, 103D-1002) (Imp:
HRS §103D-1002)

§3-124-5 Evaluation procedure and contract award.

Preference (6) shall be applied to the evaluated prices.

- (1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for out-of-state and tax exempt offerors, if applicable, pursuant to section 103-53.5, HRS;
- (3) Preferred use of Hawaii software development businesses, if applicable, pursuant to section 103D-1006, HRS;
- (4) Recycled products, if applicable, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, if applicable, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, if applicable, pursuant to section 103D-1003, HRS.

(f) Should the price comparison, after taking into consideration all applicable preferences, result in identical total prices, award shall be made to the offeror offering a registered Hawaii product in preference to a non-Hawaii product.

[Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-6 Change in class status. (a) A person whose product is on the Hawaii products list shall be responsible for informing the administrator of any change affecting the classification of the product within sixty days of the change.

(b) If, since the original application, there has been a change in either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost of the product(s), which could affect the product(s) classification, a new application must be submitted within sixty days of the change.

[Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-9

§3-124-7 Biennial renewal. (a) All persons whose product(s) is registered on the Hawaii products list will be notified by the State thirty days prior to the date for biennial renewal or if a new application

is required. A sixty day grace period is allowed for both the renewal and the new application after the preference expiration date which normally will be the end of an accounting period.

(b) An affidavit for renewal shall be submitted if, since the filing of the original application, there has been no change in either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost affecting the product classification. Provided the administrator is satisfied that the classification of a registered Hawaii product is not changed, the administrator shall renew the registration and classification of the product.

(c) Failure to complete the biennial renewal or to provide any further information requested by the administrator shall be grounds for rejecting an application or for disqualification of the product.

(d) Any person receiving a notice for renewal for Hawaii products list qualification shall advise the administrator immediately if there is any reason why the person cannot comply within the sixty day grace period. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-8 Termination. If change of status is not reported as required in section 3-124-6, or if the biennial renewal is not provided as required by section 3-124-7, the administrator shall terminate the registration of the product effective at the end of the sixty day grace period allowed. Any person terminated that desires to be reinstated on the Hawaii products list shall submit a new application. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1002) (Imp: HRS §103D-1002)

§3-124-9 (Reserved).

SUBCHAPTER 2

PRINTING, BINDING, AND STATIONERY WORK

§3-124-10

§3-124-10 Purpose. The purpose of these rules is to provide procedures for the application of the preference for printing, binding, and stationery work, including all preparatory work, presswork, bindery work, and any other production-related work, performed within the State. The objective is to promote the use of businesses performing the work in Hawaii by state purchasing agencies. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1003) (Imp: HRS §103D-1003)

§3-124-11 Applicability. These rules shall apply to all invitation for bids or request for proposals issued by any state purchasing agency, and these solicitations shall so stipulate; provided that whenever it is established that this work cannot be performed within the State or that the lowest price for which the work can be procured within the State exceeds the offer of an out-of-state manufacturer by fifteen per cent, the work so affected may be performed outside the State. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1003) (Imp: HRS §103D-1003)

§3-124-12 Evaluation procedure and contract award. (a) If the in-state price is low, award shall be made to the offeror offering to perform the work in Hawaii.

(b) If an out-of-state price is low, the following applies in determining the lowest evaluated price:

- (1) The purchasing agency shall divide the difference between the out-of-state price and the Hawaii price by the out-of-state price. This will provide the percentage by which the Hawaii price exceeds the out-of-state price.
- (2) If the percentage, so calculated, is less than fifteen per cent, award shall be made to the offeror proposing to perform the work in Hawaii.
- (3) If the percentage is fifteen per cent or more, award shall be made to the offeror proposing to perform the work outside of Hawaii.

(c) The contract amount of any contract awarded shall be in the amount of the price offered, exclusive of any preferences.

(d) Should more than one preference allowed by

§3-124-14

statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (5) in this section shall be applied to the original prices. The sum of the products of the preferences, where applicable, shall be added to the original price. Preference (6) shall be applied to the evaluated prices.

- (1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for out-of-state and tax exempt offerors, if applicable, pursuant to section 103-53.5, HRS;
- (3) Preferred use of Hawaii software development businesses, if applicable, pursuant to section 103D-1006, HRS;
- (4) Recycled products, if applicable, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, if applicable, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, if applicable, pursuant to section 103D-1003, HRS. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1003) (Imp: HRS §103D-1003)

§3-124-13 Penalties. (a) No payment shall be made by the State for printing, binding, or stationery work unless the work was done in Hawaii or was authorized to be done out-of-state, pursuant to this subchapter.

(b) Any manufacturer violating a stipulation in an offer or contract that all work will be performed in Hawaii shall be subject to a civil penalty, the amount not to exceed the price offered, to be collected by a civil action filed by the respective attorney general or corporation counsel on behalf of the State. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1003) (Imp: HRS §103D-1003)

§3-124-14 (Reserved).

SUBCHAPTER 3

RECIPROCAL

§3-124-15

§3-124-15 Purpose. The purpose of these rules is to provide procedures for the application of the reciprocal preference. The objective is to ensure fair and open competition for Hawaii businesses engaged in contracting with the State. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-16 Definitions. As used in these rules: "Out-of-state offeror" means any person, agency, corporation, or other business entity whose principal place of business or ancillary headquarters is not located in the State or is not registered with the state department of commerce and consumer affairs to do business in the State. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-17 Applicability. (a) The chief procurement officer may impose a reciprocal preference against offerors from states which apply preferences. (b) When applied, a resident offeror of the State of Hawaii may be given a reciprocal preference equal to the preference the out-of-state offeror would be given in their own state. If the out-of-state offeror's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference. (c) At least annually, the administrator of the state procurement office shall make available a list of preference laws of all states to the chief procurement officers. (d) These rules shall not apply to any transaction if the provisions of these rules conflict with any federal laws. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-18 Evaluation procedure and contract award. (a) When applied, the amount of the reciprocal preference as specified in section 3-124-17 shall be

added for evaluation purposes to the out-of-state offeror's price.

(b) The responsible and responsive offeror submitting the lowest evaluated offer, taking into consideration all applicable preferences, shall be

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awarded the contract.

(c) The contract amount shall be the amount of the price offered, exclusive of preference.

(d) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (5) in this section shall be applied to the original prices. The sum of the products of the preferences, where applicable, shall be added to the original price. Preference (6) shall be applied to the evaluated prices.

- (1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for out-of-state and tax exempt offerors, if applicable, pursuant to section 103-53.5, HRS;
- (3) Preferred use of Hawaii software development businesses, if applicable, pursuant to section 103D-1006, HRS;
- (4) Recycled products, if applicable, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, if applicable, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, if applicable, pursuant to section 103D-1003, HRS. [Eff DEC 15 1995]
(Auth: HRS §§103D-202, 103D-1004) (Imp: HRS §103D-1004)

§3-124-19 (Reserved).

SUBCHAPTER 4

RECYCLED PRODUCTS

Historical Note: Subchapter 4, Chapter 124 Subtitle 11 of Title 3, Hawaii Administrative Rules, is based upon Chapter 62 of Title 3, HAR, Procurement of Recycled Products of the department of accounting and general services. [Eff. 11/4/93; R]

§3-124-20 Purpose. The purpose of these rules is to establish percentages of preference, the method of

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determining the recycled content to qualify various products for preference, and the application of the preference. The objective is to promote the use of recycled products by state and county public purchasing agencies. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-21 Definitions. As used in these rules:
"End use" means the purpose for which an item has been manufactured.

"Post-consumer recovered material" means any product used by a consumer, including a business that purchases the material, that has served its intended end use, and that has been separated or diverted from the solid waste stream for the purpose of use, reuse, or recycling.

"Product" means material, manufacture, supply, merchandise, good, ware, and foodstuff.

"Recovered material" means material that has been separated, diverted, or removed from the solid waste stream after a manufacturing process for the purpose of use, reuse, or recycling. This term does not include those materials that are generated and normally reused on-site for manufacturing processes (such as mill broke, in the case of paper products).

"Recycled content" means the percentage of a product composed of recovered material, or post-consumer recovered material, or both.

"Recycled product" means a product containing recovered material, or post-consumer recovered material, or both.

"Solicitation" means an invitation for bids or a request for proposals.

"Solid waste stream" means discarded material moving from the point of discard to ultimate disposition. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §103D-1005)

§3-124-22 Applicability. (a) These rules shall apply to all solicitations issued by a state purchasing agency when so stated in the solicitation.

(b) These rules shall not apply whenever such application will disqualify any government agency from receiving federal funds or aid. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-24

§3-124-23 Qualification procedure. (a) Any person desiring a preference pursuant to section 103D-1005, HRS, shall certify the recycled content of the product when submitting an offer. A Certification of Recycled Content form issued by the administrator shall be included as part of the invitation for bids.

(b) Offerors shall indicate on the certification form, included as part of the invitation for bid, the recycled content of the products offered. Recycled content shall be expressed as a percentage of total product weight.

(c) Bidders shall submit with the certification form sufficient information to support the stated recycled content of the products offered. For purposes of this section, sufficient information shall include, but not be limited to, manufacturer's specifications, or manufacturer's certification. The procurement officer calling for offers may request additional information deemed necessary in order to qualify a product. The procurement officer calling for offers shall have sole discretion in determining acceptance of a product.

(d) Any offeror whose product is not accepted for application of preference may appeal by filing a written request for re-examination of facts to the procurement officer calling for offers. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-24 Bidding procedure. (a) Solicitations issued by a state purchasing agency pursuant to sections 103D-302 and 103D-303, HRS, and consistent with sections 3-122-21 and 3-122-46, shall contain a notice stating that a price preference will be given to recycled products. This price preference will be at least five per cent of the price of the item, and will be used for price evaluation.

(b) All state purchasing agencies issuing solicitations shall provide an appropriate space for offerors to indicate whether the offeror is offering to use or supply a recycled or a non-recycled product and to list the prices of the recycled or non-recycled products.

(c) When a purchase specifies only recycled products or when only recycled products are offered, the price preference shall not apply.

(d) Offerors requesting a preference shall submit

§3-124-24

a completed certification form, as required by section 3-124-23, with each offer. Previous certifications shall not apply unless allowed by the solicitation. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-25 Evaluation procedure and contract award. (a) Where a solicitation contains both recycled products and non-recycled products, then for the purpose of determining the lowest evaluated offer, the original price for the non-recycled product item shall be increased by the percentage specified in the solicitation.

(b) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (5) in this section shall be applied to the original prices. The sum of the products of the preferences, where applicable, shall be added to the original price. Preference (6) shall be applied to the evaluated prices.

(1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;

- (2) Tax adjustment for out-of-state and tax exempt offerors, if applicable, pursuant to section 103-53.5, HRS;
- (3) Preferred use of Hawaii software development businesses, if applicable, pursuant to section 103D-1006, HRS;
- (4) Recycled products, if applicable, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, if applicable, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, if applicable, pursuant to section 103D-1003, HRS.

(c) The responsible and responsive offeror submitting the lowest evaluated offer, taking into consideration all applicable preferences shall be awarded the contract.

(d) The contract amount of any contract awarded shall be the original price offered, exclusive of any preference.

(e) Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices, award shall be made to

§3-124-30

the responsible and responsive offeror as follows:

- (1) To the offeror offering the product with the higher post-consumer recovered material content; or
- (2) To the offeror offering the product with the higher recovered material content if the products have identical post-consumer recovered material content.

(f) If the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices for products with identical recycled content, the contracting officer shall follow the requirements of section 3-122-34 for low tie bids. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §§103D-1005, 342G-42)

§3-124-26 Mandatory purchase of office paper and printed material with recycled content. (a) State purchasing agencies shall and county purchasing

agencies are urged to purchase only office paper and printed material with recycled content.

(b) Exceptions to this section are when statutory, regulatory, or contractual requirements preclude the use or purchase of paper with recycled contents of the same type and quantity as virgin paper.

(c) When specifications call for recycled products only, the preference stated in this subchapter shall not apply. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1005) (Imp: HRS §103D-1005)

§§3-124-27 to 3-124-29 (Reserved).

SUBCHAPTER 5

SOFTWARE DEVELOPMENT BUSINESSES

§3-124-30 Purpose. The purpose of these rules is to establish a percentage of preference, the method to qualify various software development businesses for the preference, and application of the preference. The objective is to promote the use of Hawaii software development business by state purchasing agencies. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-31

§3-124-31 Definitions. As used in these rules:
"Hawaii software development business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii that proposes to obtain eighty per cent of the labor for software development from persons domiciled in Hawaii.

"Hawaii software service center" means the office that is responsible for maintaining the listings of all state software development projects.

"Software development" means any work related to feasibility studies, system requirements analysis, system design alternatives analysis, system external specifications, system internal specifications,

programming, testing, debugging, or implementation of an information processing system.

"Solicitation" means an invitation for bids or a request for proposals. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §§103D-1006, 206M-31)

§3-124-32 Applicability. (a) These rules shall apply to all solicitations issued by a state purchasing agency when so stated in the solicitation.

(b) These rules shall not apply whenever such application will disqualify any government agency from receiving federal funds or aid.

(c) The Hawaii software service center with the cooperation of the procurement policy board and the director of finance, shall develop and make public a list of state agencies requesting software services including a description of the software services required and a timetable for development.

(d) The information provided on the list shall not be binding and may be changed at the discretion of state agencies, provided that any changes shall be promptly communicated to the Hawaii software service center. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §§103D-1006, 206M-33)

§3-124-33 Qualification procedure. (a) A business desiring a preference pursuant to section 103D-1006, HRS, shall certify that they are a Hawaii software development business when submitting an offer. A Certificate of Eligibility form issued by the administrator shall be included as part of the offer.

§3-124-34

(b) Offerors shall indicate on the certification form, included as part of the offer, sufficient information to substantiate that eighty per cent of the employees who will be working on the proposed software development project are domiciled in Hawaii.

(c) Offerors shall submit with the certification form sufficient information to support the Hawaii software development business preference. Sufficient information shall include, but not be limited to, the

authorized officer's name, office or position held, name of offeror and its local address, date that the office was opened, name and local addresses of offeror's employees who will provide the labor for the required services. The procurement officer calling for offers may request additional information deemed necessary in order to qualify the offeror, and shall have sole discretion in determining acceptance of the offeror as a Hawaii software development business.

(d) Any offeror who is not accepted for the Hawaii software development business preference may appeal by filing a written request for re-examination of facts to the procurement officer who issued the solicitation. [Eff DEC 15 1995] (Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-34 Bidding procedures. (a) Solicitations issued by a state purchasing agency shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the price, and will be used for evaluation.

(b) All state purchasing agencies shall provide an appropriate space for offerors to indicate whether the bidder is requesting the Hawaii software development business preference.

(c) When a solicitation specifies that because of federal requirements, the Hawaii software development business preference will not be considered, the price preference shall not apply.

(d) Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-33, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

(e) Any offeror who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the offeror's offer will be increased by ten per cent

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for purposes of evaluation. [Eff DEC 15 1995]
(Auth: HRS §§103D-202, 103D-1006) (Imp: HRS §103D-1006)

§3-124-35 Evaluation procedure and contract award. (a) In any expenditure of public funds for software development where offers received contain both Hawaii and non-Hawaii software development businesses, for the purpose of selecting the lowest offer only, the offer by a non-Hawaii software development business shall be increased by ten per cent.

(b) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified herein. The preferences (1) through (5) in this section shall be applied to the original prices. The sum of the products of the preferences, where applicable, shall be added to the original price. Preference (6) shall be applied to the evaluated prices.

- (1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for out-of-state and tax exempt offerors, if applicable, pursuant to section 103-53.5, HRS;
- (3) Preferred use of Hawaii software development businesses, if applicable, pursuant to section 103D-1006, HRS;
- (4) Recycled products, if applicable, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, if applicable, pursuant to section 103D-1004, HRS; and
- (6) Printing, binding, and stationery work within the State, if applicable, pursuant to section 103D-1003, HRS.

(d) The responsible and responsive offeror submitting the lowest evaluated offer(s), taking into consideration all applicable preferences shall be awarded the contract.

(e) The contract amount of any contract awarded shall be the original price offered, exclusive of any preference.

(f) Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices for Hawaii software development projects, the procurement officer shall award the contract resulting from an invitation for

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bids pursuant to section 3-122-34.
[Eff DEC 15 1995] (Auth: HRS §§103D-202,
103D-1006) (Imp: HRS §103D-1006)

§§3-124-36 to 3-124-39 (Reserved).

SUBCHAPTER 6

PREFERENCE TO IN-STATE CONTRACTORS BIDDING ON STATE AGENCY CONTRACTS FOR PUBLIC WORKS PROJECTS

§3-124-40 Purpose. The purpose of these rules is to establish the method of determining preference to in-state contractors when awarding a contract for a public works project. The objective is to promote the use of in-state contractors. [Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

§3-124-41 Definitions. As used in these rules:
"Offeror" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the work contemplated.

"Contractor" means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State, and acting directly or through its agents or employees.

"Public works project" means any State of Hawaii project, including but not limited to development of any state housing pursuant to chapter 201E, HRS, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes.

"Solicitation" means an invitation for bids or a request for proposals.

"State agency" means any board, commission, department, bureau, division, agency, or political

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subdivision of the State government, excluding the counties. [Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

§3-124-42 Applicability. (a) These rules shall apply to solicitations for public works projects.

(b) These rules shall not apply whenever such application will disqualify any State agency from receiving federal funds or aid.

(c) The in-state contractor preference may not be used in combination with any other preference otherwise available under state or federal law. If any other preference is mandated by law or is chosen by the bidder, then the in-state contractor preference cannot be used. [Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

§3-124-43 Qualification procedure. (a) Any offeror desiring an in-state contractor preference pursuant to section 103-45.5, HRS, shall complete an application for a tax clearance and submit it to the State department of taxation for a tax clearance certificate. Upon receipt of the application for tax clearance, the State department of taxation will verify that the applicant has filed State general excise and income tax returns, and has paid all amounts owing on such returns for two consecutive years immediately prior to the date of the submission of the offer, for offers of five million dollars or less, and for four consecutive years immediately prior to the date of the submission of the offer, for offers of more than five million dollars. Concurrently, the State department of taxation will coordinate with the State department of labor and industrial relations to obtain updated information on unemployment and training taxes. The State department of labor and industrial relations will verify that the applicant has filed state unemployment and training tax returns, and has paid all amounts owing on such returns for two consecutive years immediately prior to the date of the submission of the offer, for offers of five million dollars or less, and for four consecutive years immediately prior to the date of the submission of the offer, for offers of more

than five million dollars and provide the information to the State department of taxation.

(b) The State department of taxation will issue a

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tax clearance certificate to the applicant upon its determination that the applicant has filed state employment, general excise and income tax returns, and has paid all amounts owing on such returns, in accordance with section 103-45.5, HRS.
[Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

§3-124-44 Bidding procedure. (a) Solicitations for public works projects issued by a state purchasing agency pursuant to chapter 103D, HRS, and consistent with section 3-124-41, shall state that a price preference will be given to in-state contractors subject to directions contained in the specifications which shall define the applicability, qualification procedures, and limitations of the in-state contractor preference. This price preference will be five per cent of the price offered, and will be used for price evaluation, as specified in section 3-124-45.

(b) All state purchasing agencies issuing solicitations for public works projects shall provide an appropriate space for offerors to indicate whether the offeror is requesting preference as an in-state contractor. The solicitation shall state that the in-state contractor preference may not be used with any other preference.

(c) Offerors requesting an in-state contractor preference shall submit a tax clearance certificate obtained in accordance with section 3-124-43, with each solicitation. All state purchasing agencies issuing solicitations for public works projects shall provide a caution that failure to submit the tax clearance certificate automatically voids the selection of the in-state contractor preference.

(d) All state purchasing agencies issuing solicitations for public works projects which provide a schedule of Hawaii product preference shall provide a caution that if the offeror indicates on the offer form that it elects the in-state contractor preference to be

applied to its offer, no other preferences will be allowed and all other preference selections will be ignored by the procuring agency. [Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

§3-124-45 Evaluation procedure and contract award. (a) When the in-state contractor preference is

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not selected, offers shall be evaluated by applying all preferences selected by offerors which are allowed by statute. Calculations for adjustments shall be based upon the original prices offered. Should more than one preference apply, the evaluated price shall be the sum of the original price plus applicable preference adjustments.

(b) Whenever any offeror selects and qualifies for the in-state contractor preference, the price offered by those not selecting or qualifying for the in-state contractor preference shall be increased by five per cent for evaluation purposes.

(c) All offers shall be subject to the adjustments of other preferences selected by other offerors.

(d) The responsible and responsive offeror submitting the offer with the lowest evaluated price shall be awarded the contract.

(e) The contract amount of any contract awarded shall be the original price offered, exclusive of any preferences.

(f) Should the price comparison result in identical evaluated prices, and section 103-45.5(e), HRS, does not apply, the procurement officer shall select the winning offer resulting from an invitation for bids, pursuant to section 3-122-34.

[Eff DEC 15 1995] (Auth: HRS §103D-202) (Imp: HRS §103-45.5)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Chapter 3-124, Hawaii Administrative Rules, on the Summary Page dated November 7, 1995, was adopted on November 7, 1995, following a public hearing held on September 21, 1995 in Kailua-Kona, Hawaii; September 22, 1995 in Hilo, Hawaii; September 26, 1995 in Honolulu, Hawaii; October 10, 1995 in Wailuku, Maui; and on October 20, 1995 in Lihue, Kauai, after public notice was given in the Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 21, 1995, and in The Honolulu Advertiser on August 22, 1995.

The adoption of chapter 3-124 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Haruo Shigezawa
Chairperson
Procurement Policy Board

Sam Callejo

State Comptroller

APPROVED:

Benjamin J. Cayetano
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed